

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re patent
appln. of: Thomas Welsh et al.

Serial No.: 09/935,926

Filed: August 23, 2001

For: **LINEAR COMPRESSION
LATCH**

Confirm. No.: 1408

Examiner: Carlos Lugo

Art Unit: 3676

Att'y Docket: 195-01

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

This reply brief is being submitted electronically on August 20, 2007 in response to the Examiner's Answer mailed on June 20, 2007.

In order to anticipate applicants' claimed invention, the cited reference Seaman must disclose each and every limitation of applicants' sole independent claim 9 on appeal.

It does not.

This can be shown by inspection of the sketch appended to the Examiner's Answer. Even if the pin shown in the slot moved in the unphysical manner depicted by

the Examiner (a pair of straight lines) in the sketch, that motion would not meet the limitation that the pawl in applicants' latch be mounted to travel in a second path *substantially perpendicular* to the first path between an intermediate position and the final position. According to the Examiner, the sketch shows that the paths are substantially or approximately perpendicular. On the contrary, the sketch shows that the paths, as drawn by the Examiner, are substantially parallel. By eye, they deviate from being parallel by about 20 degrees, or form an interior angle of about 160 degrees.

"Substantially perpendicular" is a popular limitation in patent claims, and it has been construed several times by the courts in the context of infringement suits.

"Substantially" is a descriptive term frequently used in claims to avoid strict numerical boundaries to the specified parameter. Anchor Wall Sys. v. Rockwood Retaining Walls, Inc., 340 F.3d 1298, 1310-11 (Fed. Cir. 2003) (quotation and citation omitted).

Judicial constructions of the phrase are not consistent with the Examiner's construction of the term. For example, in Christiana Indus. v. Empire Elecs., Inc., 443 F. Supp. 2d 870, 877 (E.D. Mich. 2007), the court construed the phrase "substantially perpendicular" as used in claim 3 of the patent in suit, and found based on the intrinsic evidence, that the phrase means an angle that is "90 degrees or approximately 90 degrees." Based on this construction, the court found that an accused device in which the critical angle was either 112 or 120 degrees did not meet the limitation and thus did not infringe, at least for purposes of the preliminary injunction sought by plaintiff. The angle in the Examiner's sketch far exceeds 120 degrees.

In Konvin Assocs. v. Extech/Exterior Techs., 2006 U.S. Dist. LEXIS 63250, * 46 (N.D. Ill. 2006), the court construed the term "traverse to" to mean "substantially perpendicular" which the court understood to mean "at 90 degrees to."

The rejection should be reversed.

Respectfully submitted,

August 19, 2007

Order No. 5217

/Alex R. Sluzas/
Alex R. Sluzas, Esq.
Reg. No. 28,669

PAUL AND PAUL
Suite 2900
Two Thousand Market Street
Philadelphia, PA 19103
215-568-4900